

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS DAIDONE,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

USDC SDNY
DOCUMENT
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DATE FILED: 9/24/18

02-CR-1584 (RMB)

18-CV-8218 (RMB)

TRANSFER ORDER

RICHARD M. BERMAN, United States District Judge:

Movant, currently incarcerated in the United States Penitentiary in Allenwood, Pennsylvania, brings this *pro se* motion under 28 U.S.C. § 2255, seeking to challenge his conviction entered in *United States v. Daidone*, No. 02-CR-1584 (RMB) (S.D.N.Y. June 30, 2004), *aff'd*, 471 F.3d 371 (2d Cir. 2006). For the reason set forth below, the Court transfers this action to the United States Court of Appeals for the Second Circuit.

Movant filed a previous motion for relief under § 2255 challenging the same conviction, which was denied on the merits. *See Daidone v. United States*, No. 08-CV-2545 (RMB), 2009 WL 2611943 (S.D.N.Y. Aug. 24, 2009), *aff'd*, 422 F. App'x 26 (2d Cir. 2011) (summary order), *cert. denied*, 565 U.S. 1036 (2011). Because Movant's previous § 2255 motion was denied on the merits, his current § 2255 motion is a second or successive § 2255 motion. *See Corrao v. United States*, 152 F.3d 188, 191 (2d Cir. 1998).

Before a second or successive § 2255 motion is filed in the district court, authorization from the appropriate Court of Appeals is required. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). Movant

must therefore move in the United States Court of Appeals for the Second Circuit for permission to pursue his current § 2255 motion.¹

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Movant. In the interest of justice, the Court transfers this motion under § 2255 to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996). This order closes this case. If the Court of Appeals authorizes Movant to proceed in this matter, he shall move to reopen this case under this civil docket number.

As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: *Sept 24, 2018*
New York, New York

Copies mailed.



RICHARD M. BERMAN
United States District Judge

¹ Movant must demonstrate to the Court of Appeals that his current § 2255 motion is based on newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court. *See* § 2255(h).